

Message Text

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43

ACTION EUR-12

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FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 0208

AMEMBASSY BERLIN

AMEMBASSY LONDON

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C O N F I D E N T I A L USBERLIN 2203

E.O. 11652:GDS

TAGS: PGOV, PFOR, WB, GW, UR, YU

SUBJECT: SOVIETS PROTEST FRG-YUGOSLAVIA

CUSTOMS TREATY

1. SUMMARY: SOVIETS DELIVERED STATEMENT
DECEMBER 2 PROTESTING EXTENSION TO BERLIN OF RECENT
FRG-YUGOSLAVIA TREATY ON CUSTOMS COOPERATION.
TREATY IN QUESTION WAS APPROVED BY AK FOR EXTENSION
TO BERLIN IN SEPTEMBER WITHOUT RESERVATION. WE ARE
COORDINATING BRIEF RECOMMENDED RESPONSE FOR REVIEW
IN BONN. END SUMMARY.

2. SOVIET COUNSELOR MADE FOLLOWING STATEMENT TO
CHAIRMAN POLAD (FRENCH):

BEGIN TEST: IT HAS BEEN LEARNED THAT AT THE END
OF OCTOBER 1974 THE GOVERNMENT OF THE FEDERAL REPUBLIC
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SUBMITTED FOR THE EXAMINATION OF THE BUNDESTAG A DRAFT

LAW FOR THE RATIFICATION OF A TREATY CONCLUDED APRIL 2, 1974 BETWEEN THE FRG AND YUGOSLAVIA ON MUTUAL ASSISTANCE FOR THE PREVENTION, DISCOVERY AND SUPPRESSION OF VIOLATIONS OF CUSTOMS REGULATIONS. THE EXTENSION OF THE TREATY TO THE WESTERN SECTORS OF BERLIN IS ENVISAGED.

THE TREATY IN QUESTION AFFECTS DIRECTLY BY ITS CONTENT QUESTIONS OF STATUS AND SECURITY. IT REGULATES QUESTIONS CONNECTED WITH THE SUPPRESSION OF CUSTOMS INFRACTIONS AND THE PROSECUTION OF PERSONS WHO ARE INVOLVED IN SUCH OFFENCES, INCLUDING SUCH SERIOUS INFRACTIONS AS THE SMUGGLING OF WEAPONS, MUNITIONS AND EXPLOSIVES.

THE RIGHTS AND OBLIGATIONS WHICH FLOW FROM THESE PROVISIONS OF THE TREATY CONSTITUTE A MANIFESTATION OF STATE SOVEREIGNTY AND CAN ONLY BE APPLIED WITHIN THE BORDERS OF ONE'S OWN TERRITORY. THIS IS CONFIRMED DIRECTLY BY ARTICLE 9 OF THE TREATY IN WHICH IT IS STATED THAT CUSTOMS ASSISTANCE CAN BE REFUSED IF THE REQUESTED STATE CONSIDERS THAT SATISFACTION OF THE REQUEST IN QUESTION COULD PREJUDICE THE SOVEREIGNTY, SECURITY, PUBLIC ORDER OR OTHER ESSENTIAL INTERESTS OF THE STATE.

THE FRG INTENTION TO EXTEND THE TREATY IN QUESTION TO THE WESTERN SECTORS OF BERLIN, THEREFORE, CAN ONLY BE CONSIDERED AN ATTEMPT TO USURP RIGHTS AND COMPETENCES IN QUESTIONS OF SECURITY AND STATUS WHICH THE FRG, IN ACCORDANCE WITH THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971 DOES NOT AND CANNOT POSSESS IN WEST BERLIN.

THE SOVIET SIDE WOULD LIKE AGAIN TO CALL ATTENTION TO THE FACT THAT THE FRG, IN DIRECT CONTRADICTION TO THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971, IS CONTINUING ITS PREVIOUS PRACTICE OF EXTENDING INTERNATIONAL AGREEMENTS TO "LAND BERLIN" ALTHOUGH IT IS GENERALLY KNOWN THAT THE WESTERN SECTORS OF BERLIN ARE NOT A LAND OF THE FRG AND CANNOT BE GOVERNED BY IT.

THE SOVIET SIDE CONSIDERS THE ATTEMPT BY THE FRG TO EXTEND THE TREATY BETWEEN THE FRG AND THE SOCIALIST CONFIDENTIAL

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FEDERATION OF THE REPUBLIC OF YUGOSLAVIA OF APRIL 2, 1974 TO THE WESTERN SECTORS OF BERLIN AN ILLEGAL ACT. IT EXPRESSES THE HOPE THAT THE COMPETENT UNITED STATES, BRITISH AND FRENCH AUTHORITIES WILL TAKE THE NECESSARY MEASURES TO PREVENT THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971 FROM BEING VIOLATED. END TEXT.

3. CHAIRMAN POLAD RESPONDED THAT HE WAS NOT FAMILIAR WITH TREATY IN QUESTION BUT THAT ALLIES, IN APPLICATION OF ESTABLISHED PROCEDURES, CAREFULLY STUDY ALL TEXTS SUBMITTED TO THEM.

4. FRG-YUGOSLAV CUSTOMS TREATY WAS APPROVED BY KOMMANDATURA FOR EXTENSION TO BERLIN WITHOUT RESERVATION IN SEPTEMBER. ARTICLE 9, PROVIDING FOR POSSIBILITY OF REFUSAL OF COOPERATION BECAUSE OF SOVEREIGNTY, SECURITY OR OTHER QUESTIONS OF ESSENTIAL STATE INTEREST, IS VIRTUALLY IDENTICAL TO ARTICLES IN CUSTOMS AGREEMENTS WITH SWEDEN AND NORWAY SIMILARLY APPROVED IN MARCH 1973 AND NOVEMBER 1974 RESPECTIVELY. BERLIN HAS, OF COURSE, BEEN INTEGRAL PART OF FRG CUSTOMS AREA FOR TWO DECADES, AND ALL PREVIOUS FRG AGREEMENTS IN THIS FIELD HAVE BEEN EXTENDED. WE ARE, THEREFORE, SEEKING TO COORDINATE WITH ALLIED MISSIONS FOLLOWING BRIEF REPLY WHICH WOULD BE SUBMITTED TO EMBASSIES FOR CONFIRMATION BEFORE DELIVERY TO SOVIETS: BEGIN TEXT:

WITH REFERENCE TO THE ORAL STATEMENT WHICH YOU MADE (TO ME) DECEMBER 2 CONCERNING A TREATY ON CUSTOMS COOPERATION BETWEEN THE FRG AND YUGOSLAVIA, I HAVE BEEN ASKED TO ADVISE YOU ON BEHALF OF THE ALLIED AUTHORITIES THAT THE ALLIED KOMMANDATURA HAS CAREFULLY REVIEWED THE TREATY IN QUESTION IN ACCORDANCE WITH ESTABLISHED PROCEDURES TO ENSURE THAT ITS APPLICATION TO BERLIN WOULD NOT AFFECT ALLIED RIGHTS AND RESPONSIBILITIES INCLUDING THOSE OF SECURITY AND STATUS. WITH RESPECT TO THE POINT IN YOUR STATEMENT ON THE USE OF THE TERM "LAND BERLIN," I WOULD REFER YOU TO PREVIOUS COMMUNICATIONS OF THE THREE
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GOVERNMENTS INCLUDING THAT OF FEBRUARY 22, 1973.
END TEXT. SELIGMANN

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